

REMARKS**A. Amendments to the Claims**

Claim 13 is new. Claims 6-8 and 10-13 are to remain pending following entry of this amendment.

New claim 13 adds to claim 12 the requirement that the partitions be substantially continuous over their entire vertical and horizontal extent. As discussed thoroughly below in connection with the rejections of the pending claims under section 103, it is respectfully submitted that this limitation is redundant because such continuity is inherent in the ordinary and customary meaning of the term "partition," which appears in the specification as originally filed and in the claims. In the alternative, it is respectfully submitted that this limitation is inherently disclosed in the specification as originally filed, also for the reasons discussed below.

B. 35 U.S.C. § 103

In the Office action of January 26, 2009 (the "Office Action"), the examiner rejects claims 6-8 and 10-12 under 35 U.S.C. § 103 as obvious over U.S. patent no. 3,915,309 to Brazdo in view of U.S. patent no. 2,957,973 to Torrez. The applicants traverse the rejection and respectfully request reconsideration and withdrawal in view of the following.

For a claimed invention to be rejected as obvious under section 103, the invention as a whole must be obvious in view of the prior art. MPEP § 2141.02 (8th ed. [R-7] 2008). A conclusory statement that the claimed invention is obvious is insufficient, moreover. MPEP § 2142. Rather, the examiner must articulate reasoning with some rational undermining to support the legal conclusion of obviousness. *Id.*

The examiner writes:

Brazdo does not recite two partitions between any two adjacent channels. Torrez teaches a rack comprising two partitions between any two adjacent channels (Figure 7). It would have been obvious to one of ordinary skill in the art

to incorporate the partition structure of Torrez into the invention of Brazdo since both are directed to rack devices, since Brazdo already included partitions, since this type of partition structure was commonly used in the art as shown by Torrez, and since this partition structure would permit greater flexibility in the use of the rack of Brazdo by permitting greater separation between the items to be held and greater room for flexible expansion of the pockets of Brazdo to accommodate larger items.

The examiner therefore appears to rely on “the familiar teaching-suggestion-motivation (TSM) rationale” to conclude that the claimed invention is obvious. MPEP § 2141(III). But TSM fails to support this conclusion, in part because Brazdo and Torrez, alone and in combination, fail to teach or suggest all claim limitations. More specifically, the cited references, alone and in combination, fail to teach or suggest limitations of claim 12, including at least the existence of a plurality of partitions within the meaning of the claim.

Claim 12 includes, in part:

12. A magazine-like carrier device for handling and heat treating a plurality of rectangular bags or film packs, the carrier device comprising:

* * *

a plurality of partitions affixed flexibly to [a] body and directed away from the body, substantially parallel to each other and to . . . channels, such that a plurality of receiving pockets is formed, each pocket having a v-shaped bottom that is the bottom of one of the channels, each partition forming a wall of one of the pockets, two partitions being affixed between any two adjacent channels

In examination, words in a claim are to be given their plain meaning, which is the ordinary and customary meaning that each term would have to a person of ordinary skill in the art in question at the time of the invention. MPEP § 2111.01. Moreover, this meaning must be consistent with the way the words are used in the specification, as must be the meaning given to the claim as a whole. *Id.*

The examiner asserts that Brazdo teaches plural parallel partitions affixed to the body of the rack and forming pockets and cites Brazdo at Figs. 1 and 2, reference numbers 25, 27, and 29. (Office Action at 2.) Brazdo describes these dividers as “open slotted separation walls,” and Figs. 1 and 2 of Brazdo depict each divider as comprising widely-spaced parallel vertical slats that join a horizontal element that the top of the divider. (Col. 5, lines 6–12.)

The examiner further cites Torrez, asserting that Torrez teaches in Fig. 7 a rack that comprises two partitions between any two adjacent channels. (Office Action at 2.) Torrez discusses a cooker that uses infrared lamps. (Torrez at col. 1, lines 17–18.) The device includes a rack that holds food between upstanding wire loops that are welded to a wire base. (Col. 3, lines 22–26.)

It is respectfully submitted, however, that neither the slotted dividers of Brazdo nor the wire loops of Torrez may be considered partitions within any ordinary or customary meaning of the term. The word “partition” is not merely a synonym for “divider.” Rather, a partition is particular kind of divider: one popular dictionary defines a partition as “something that divides or separates, *as a wall dividing one room or cubicle from another.*” THE AMERICAN HERITAGE COLLEGE DICTIONARY 1015 (4th ed. 2002) (emphasis added).

A wire loop does not separate in the manner of a wall that separates one room from another. Nor do widely spaced parallel slats. A wall that separates one room from another does so by being a substantially continuous barrier, and, as the term is ordinarily and customarily meant, a partition refers to such a substantially continuous barrier.

It is further submitted that this is the only meaning of “partition” that is consistent with the specification. The specification notes that at the elevated temperatures used for sterilization, the film material of which the packs are made softens, and the contents tend

to flow, as a liquid does, which causes undesirable bulging (p. 6, lines 4–6). It is further noted in the specification that perforated plates are unsuitable for holding film packs during heat sterilization because the perforation pattern is transferred to the film pack materials (p. 2, lines 5–8). Vertical slats, as in Brazdo, are similarly unsuitable for use as partitions because the pattern of slats would similarly be transferred to the film pack materials, and wire loops, as in Torrez, would be expected to be even worse, as the deformation of heated film packs would tend to cause the packs to fall through the loops.

The use of dividers with substantial gaps or holes, as in Brazdo or Torrez, is further inconsistent with the use of carriers according to the specification. In embodiments of the invention, film packs are automatically inserted in a carrier by a mechanism (p. 5, lines 16–18). Moreover, the packs are inserted into the carrier from above (p. 5, line 23–p. 6, line 2). It will be apparent that a divider with substantial gaps is in such a configuration unduly susceptible to jams in ways that a largely continuous partition is not, largely negating the expected gains from automating the feeding process.

Brazdo, the primary reference cited by the examiner, actually teaches away from partitions such as used in embodiments of the invention. According to Brazdo, the open slotted design ensures the lateral flow of air to permit the entire cooling of the bread slice within a very short time frame. (Col. 5, lines 8–12.) A solid partition, as specified by the claims in the current application would frustrate the purpose stated in Brazdo, which is “to provide a rack especially designed for accommodating and retaining individual slices of toast therein wherein the rack maximizes the degree of air circulation to provide a cooled slice of toasted bread.” (Col. 3, lines 1–4.)

Moreover, nothing in Torrez teaches, suggests, or provides a motivation for using a substantially continuous partition instead of the wire loops that Torrez discusses.

For the forgoing reasons, it is respectfully submitted that claim 12 is allowable over the cited prior art. Claims 6–8, 10–11, and 13 depend directly or indirectly upon claim 12, and it is therefore respectfully submitted that these claims are also allowable based at least on their inclusion of allowable subject matter. Reconsideration and withdrawal of the rejection of all claims are therefore respectfully requested.

It is further submitted that new claim 13 explicitly recites a substantially continuous partition, such as is argued above to be inherent in the other claims, and that claim 13 is therefore allowable over the cited references.

The applicants have set forth arguments that in their view suffice to establish the patentability of the pending claims over the cited prior art, but, for the sake of brevity, they have not responded to each assertion that was made in the Office Action. The applicants reserve the right to assert additional grounds for the patentability of any or all claims, and any lack of specific response to any comment relative to patentability that was made in the Office Action is not to be interpreted as acquiescence in the substance of any such comment.

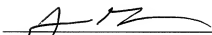
C. Conclusion

For these reasons, the applicant respectfully requests that the examiner withdraw the rejections and allow the claims. Additionally, although the applicants have set forth arguments that in their view suffice to establish the patentability of the pending claims over the cited prior art, for the sake of brevity, they have not responded to each assertion that was made in the Office Action. The applicants reserve the right to assert additional grounds for the patentability of any or all claims, and any lack of specific response to any comment relative to patentability that was made in the Office Action is not to be interpreted as acquiescence in the substance of any such comment.

To expedite prosecution of this application to allowance, the examiner is invited to call the applicant's undersigned representative to discuss any issues relating to this application.

Respectfully submitted,

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